

LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED

DEC 17 1962

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. ~~400~~ 19

OCTOBER TERM, 1962

HAROLD FAHY and WILLIAM ARNOLD,
Petitioners,

vs.

STATE OF CONNECTICUT.
Respondent.

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI.**

LORIN W. WILLIS,
Attorney for Respondent.
955 Main Street,
Bridgeport, Connecticut.

JOHN F. McGOWAN,
Assistant State's Attorney
for Fairfield County
Attorney for Respondent
County Court House
Bridgeport, Connecticut.

INDEX

	PAGE
Cases Cited	ii
Question Presented	1
Argument	2
Conclusion	5
Appendix:	
A. Statutes	1a, 2a

CASES CITED

	PAGE
<i>Hbnig v. United States</i> , 208 F2d 916 (8th Cir. 1953)	2
<i>Koticakos v. United States</i> , 328 U.S. 750	4
<i>Mapp v. Ohio</i> , 367 U.S. 643	2
<i>United States v. McCall</i> , 291 F2d 859 (2d Cir. 1961)	2
<i>Williams v. United States</i> , 263 F2d 487 (D. C. Cir. 1959)	2
<i>Woods v. United States</i> , 240 F2d 37 (D. C. Cir. 1956) cert. denied, 353 U.S. 941	2

IN THE
Supreme Court of the United States

No. 449

OCTOBER TERM, 1962.

HAROLD FAHY and WILLIAM ARNOLD,
Petitioners,

vs.

STATE OF CONNECTICUT.
Respondent.

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI.**

Question Presented

Must the conviction of the petitioner be set aside and a new trial ordered merely because of the admission of cumulative evidence obtained through an illegal search and seizure when the highest State Court has held that there appeared of record overwhelming evidence of guilt of the petitioners independent of it?

ARGUMENT.

The petition for a Writ of Certiorari should be denied on the ground that a conflict on the Question Presented in the Courts of Appeals would not be a ground for hearing this case. This case was heard in a State trial court and appeal was taken to the Supreme Court of Errors of the State of Connecticut where a decision was rendered upholding the conviction on the ground that the admission of the paint jar and brush, though inadmissible under the rule of **Mapp v. Ohio**, 367 U.S. 643, was at most cumulative, and that the "state's case, in chief, discloses overwhelming evidence of guilt of the defendants".

Further it is questionable whether or not there is a real conflict within the various Courts of Appeals. In **Williams v. United States**, 263 F2d 487 (D.C. Cir. 1959); in **Honig v. United States**, 208 F2d 916 (8th Cir. 1953), cited by the petitioner for the proposition that the admission of evidence obtained in violation of a constitutional right is never harmless error, the Court of Appeals was called upon to determine first, whether or not certain evidence was obtained as a result of an illegal search and seizure and then to answer whether or not the government might have offered independent evidence of guilt. In these cases, however, the Court failed or refused to find that there was ample evidence entirely unrelated to the tainted evidence upon which the trier of fact could have based a conviction as was done by the Court in **United States v. McCall**, 291 F2d 859 (2d Cir. 1961); **Woods v. United States**, 240 F2d 37 (D.C. Cir. 1956) cert. denied, 353 U.S. 941.

I.

Reversal Is Not Required As a Means of Enforcing the Constitutional Guarantees Against Unlawful Searches and Seizures.

Petitioner's position that in every case where a constitutional violation appears must result in a reversal is untenable. Assume that in a criminal case an illegal search takes place, but no evidence is found or offered as a result of it. In the same case, however, evidence is introduced by the government that establishes guilt beyond a reasonable doubt. Certainly no one could contend that the decision must be reversed merely because a bare unconstitutional violation was perpetrated. Respondent contends that the situation, in essence, is identical in this case. Here the Connecticut Supreme Court of Errors held that there was as a matter of law, substantial independent evidence of guilt in the record without reference to the illegally admitted evidence. Further, the petitioner has never contended that his subsequent confessions and admissions were inadmissible because they were the fruit of the illegal search and seizure.

II.

Petitioner Was Not Deprived of a Fair Trial Within the Meaning of the Due Process Clause of the Fourteenth Amendment.

The appearance of harmless error in the record has not deprived the petitioner of a fair trial within

4

the meaning of the Due Process clause of the Fourteenth Amendment.

The Connecticut Supreme Court of Errors in upholding the conviction in the lower court stated:

"We are not required to grant a new trial if we are of the opinion . . . errors [at the trial] have not materially injured the appellant". Conn. Gen. Stats. §52-265.

The Court was here referring to the "harmless error" statute which has its counterpart in §269 of the Judicial Code 28 USCA §391, 8 FCA, Title 28 §391, now Criminal Procedure Rule 52.

In the case of **Kotteakos v. United States**, 328 U.S. 750, a case involving the admission of certain evidence that was held to have been illegally obtained, the Court stated in reversing the conviction:

"Error should not have been held harmless under the 'harmless error' statute if upon consideration of the record the Court is left in grave doubt as to whether the error had substantial influence in bringing about a verdict."

In the **Kotteakos** case *supra*, the conviction was set aside because there was corroborative evidence on certain phases of the case but not on all phases. The test, as stated by the Court at page 764 is "what effect the error had or reasonably may be taken to have had upon the jury's decision."

In the petitioner's case, the evidence was heard by a one-judge court. The Connecticut Supreme Court of Errors held that the admission of the paint

jar and brush was improper because it was obtained by an illegal search and seizure but further held that the error was harmless because the transcript of the case discloses overwhelming proof of the guilt of the petitioner and the illegally admitted evidence would not have improperly influenced the lower court's decision.

CONCLUSION.

On the facts and law, we respectfully urge this court to deny this Petition for Certiorari.

Respectfully submitted,

JOHN F. McGOWAN,
Assistant State's Attorney
for Fairfield County.
Attorney for Respondent,
County Court House,
Bridgeport, Connecticut.

3 LORIN W. WILLIS,
Attorney for Respondent,
955 Main Street,
Bridgeport, Connecticut.

RESPONDENT'S APPENDIX A

1. Section 53-45 of the Connecticut General Statutes (1958) as amended by Public Act 437 (1959):

"Injury to public buildings, furniture or voting booths. (a) Any person who wilfully injures any public building or wilfully places a bomb or other explosive device in any such building shall be fined not more than five thousand dollars or imprisoned not more than twenty years or both.

(b) Any person who wilfully injures or carries away any part of the heating plant or equipment or furniture in and belonging to any such building or wilfully defaces or injures a voting booth or compartment shall be fined not more than one hundred dollars or imprisoned not more than six months or both."

2. Federal Rule Criminal Procedure Rule 52A. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

3. Sec. 52-265 of the Connecticut General Statutes (1949 Rev., S. 8006).

"Action of supreme court on appeals and writs of error.

On an appeal or writ of error, if the supreme court of errors finds errors in the rulings or decisions of the court below or of a judge thereof when the jurisdiction of any action or proceeding is or shall be vested in him, and unless it is

of the opinion that such errors have not materially injured the appellant or plaintiff in error, it may render judgment in favor of the appellant or plaintiff in error, together with his costs; or may remand the cause to the court below or to a judge thereof having jurisdiction, to be proceeded with by such court or by such judge to final judgment, in which case the whole costs, except the costs on the writ of error or appeal, shall be taxed in favor of the prevailing party, and the costs in the supreme court of errors shall be taxed in favor of the plaintiff in error or appellant."